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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

NUTS FOR CANDY,

Plaintiff,

v.

GANZ, INC. et al.,

Defendants.

Case No. CV 08-2873 JSW

**STIPULATION AND [PROPOSED] ORDER
 RE: DEFENDANTS' MOTION TO DISMISS
 PLAINTIFF'S COMPLAINT**

Date: November 14, 2008
 Time: 9:00 a.m.
 Judge: Hon. Jeffrey S. White
 Courtroom: Courtroom 2, 17th Floor

1 WHEREAS, on June 9, 2008 plaintiff Nuts for Candy filed a complaint in this action
2 [Doc. no. 1];

3 WHEREAS, on August 4, 2008, defendants Ganz, Inc. and Ganz U.S.A. LLC filed a
4 motion to dismiss the complaint [Doc. no. 26];

5 WHEREAS, on August 5, 2008, the Court entered an Order Setting Briefing Schedule on
6 Motion to Dismiss [Doc. no. 28];

7 WHEREAS, on August 14, 2008, the parties submitted a Stipulation and [Proposed]
8 Order to Modify Briefing Schedule on Defendants' Motion to Dismiss Plaintiffs' Complaint
9 [Doc. no. 34];

10 WHEREAS, on August 19, 2008, a Clerk's Notice was entered continuing the hearing
11 date on Defendants' motion to dismiss to November 14, 2008, at 9:00 a.m. [Doc. no. 38];

12 WHEREAS, Plaintiff has advised defendants that it chooses to avail itself of its right to
13 amend its complaint without leave of Court, Fed. R. Civ. Proc. 15(a), *see also Miles v. Dep't of*
14 *Army*, 881 F.2d 777, 781 (9th Cir. 1989) (motion to dismiss is not responsive pleading and does
15 not preclude amendment as of right prior to service and filing of responsive pleading);

16 WHEREAS, Plaintiff has further advised defendants that it intends to file an amended
17 complaint on or before September 10, 2008;

18 WHEREAS, the parties are desirous of maintaining the Case Management Conference set
19 by the Court for September 12, 2008, at 1:30 p.m. [Doc. no. 13];

20 WHEREAS, the parties are desirous of maintaining the hearing schedule previously set
21 by the Court for November 14, 2008, at 9:00 a.m. [Doc. no. 38];

22 IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED

23 Plaintiff shall file an amended complaint on or before **September 10, 2008**;

24 Defendants shall answer, move, or otherwise respond to the amended complaint on or
25 before **October 10, 2008**.

26 In the event a motion is filed in response to the complaint, oppositions and replies shall
27 be filed and served in accordance with Local Civil Rule 7-3 or as ordered by the Court.

1 Dated: August 26, 2008

By: /s/ Matthew K. Edling
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6 Dated: August 26, 2008

By: /s/ (with permission)
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13 **ORDER**

14 Based on the foregoing Stipulation of the parties and the facts set forth therein, the Court
15 finds good cause to enter the parties' requested Order.

16 Accordingly, (1) Plaintiff shall file an amended complaint on or before September 10,
17 2008; (2) Defendants shall answer, move, or otherwise respond to the amended complaint on or
18 before October 10, 2008; (3) opposition and reply to any motion filed in response to the amended
19 complaint shall be filed and served in accordance with Civil Local Rule 7-3 or as ordered by the
20 Court; (4) the hearing on any motion filed in response to the amended complaint shall be on
21 November 14, 2008, at 9:00 a.m. in Courtroom 2 on the 17th Floor of the Federal Building, 450
22 Golden Gate Avenue, San Francisco, California, before the HONORABLE JEFFREY S.
23 WHITE.

26 Dated: _____

27 JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE